

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF VENTURA  
VENTURA DIVISION**

**TENTATIVE RULINGS**

EVENT DATE: 11/30/2016                      EVENT TIME: 08:20:00 AM                      DEPT.: 43  
JUDICIAL OFFICER: Kevin DeNoce

CASE NUM: 56-2014-00461953-CU-BC-VTA  
CASE TITLE: US LEASE FINANCING INC VS. CHICAGO TITLE INSURANCE COMPANY

CASE CATEGORY:    Civil - Unlimited                                      CASE TYPE:    Breach of Contract/Warranty

EVENT TYPE:    Demurrer (CLM) - to First Amended Complaint of Plaintiff  
CAUSAL DOCUMENT/DATE FILED:    Demurrer, 11/02/2016

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The morning calendar in courtroom 43 will begin at 9 a.m. Cases including *ex parte* matters will not be called prior to 9 a.m. Please check in with the courtroom clerk by no later than 8:45 a.m. If appearing by CourtCall, please call in between 8:35 and 8:45 a.m.

With respect to the below scheduled tentative ruling, no notice of intent to appear is required. If you wish to submit on the tentative decision, you can send an email to the court at: Courtroom43@ventura.courts.ca.gov or send a telefax to Judge DeNoce's secretary, Hellmi McIntyre at 805-477-5894, stating that you submit on the tentative. Do not call in lieu of sending an email or telefax. If you submit on the tentative without appearing and the opposing party appears, the hearing will be conducted in your absence. This case has been assigned to Judge DeNoce for all purposes.

Absent waiver of notice and in the event an order is not signed at the hearing, the prevailing party shall prepare a proposed order and comply with CRC 3.1312 subdivisions (a), (b), (d) and (e). The signed order shall be served on all parties and a proof of service filed with the court. A "notice of ruling" in lieu of this procedure is not authorized.

For general information regarding Judge DeNoce and his courtroom rules and procedures, please visit: <http://www.denoce.com>

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**The court's tentative ruling is as follows:**

The Court **sustains the unopposed demurrer and grants unopposed motion to strike. The Court is inclined to** sustain the demurrer without leave to amend unless at the hearing counsel for Plaintiff indicates in detail how he is going to amend to cure the alleged defects. With respect to Defendants' request that the court issue an osc re sanction for plaintiff's alleged violation of the July 13, 2016 order, such a request should be properly noticed and not embedded within a motion to strike.

**Discussion:**

Ds claim that P violated the court's prior orders by: 1) continuing to refer to a privileged document the court ordered it not to use; and 2) including the 3<sup>rd</sup>-5<sup>th</sup> causes of action in the FAC. Ds claim that the first cause of action alleges they violated a trustee's sale guarantee ("TSG") by failing to timely defend claims for P. However, D claims that the TSG expressly provides that D have no duty to defend or prosecute claims for P. As such, it could not have breached the TSG. Ds move to strike 4 portions of the FAC because they claim P is making use of and referring to a privileged document this court ordered destroyed and ordered US Lease not to make use of or refer to. Ds claim that P is violating the court's July 13, 2016 order. Ds invite the court to issue an OSC re: sanctions. Ds have filed a request for judicial

notice asking the court to take notice of: 1) a grant deed recorded on 9/25/78; 2) a trustee's deed recorded on 4/12/10; and 3) a deed of trust recorded on 10/7/09. The Court takes judicial notice of these documents. The Court notes that the 10/18/16 minute order specifically stated:

*"Grant Chicago Title Insurance Company and Fidelity National Title Group, Inc.'s motion for judgment on the pleadings with leave to amend within ten (10) days. The amended complaint shall be filed within 10 days and should be limited to curing the 6th cause of action only. Plaintiff has submitted a proposed first amended complaint which does not reflect the court's prior ruling on the motion for summary adjudication. **The amendment should also reflect the changes to the pleading that resulted from the court's granting of summary adjudication in its 9/16/16 amended order.**"*

The FAC plaintiff filed on 10/27/16 does not attempt to cure the 6<sup>th</sup> cause of action, it eliminates it. More significantly, the FAC restates the 3<sup>rd</sup>-5<sup>th</sup> causes of action that the court granted summary adjudication of in its 9/16/16 amended order. Having not filed an opposition indicated how the defects can be cured, the Court is inclined to sustain the demurrer without leave to amend. "It is not up to the judge to figure out how the complaint can be amended to state a cause of action. Rather, the burden is on plaintiff to show in what manner he or she can amend the complaint, and how that amendment will change the legal effect of the pleading." Weil & Brown, Cal. Prac. Guide Civ. Pro. Before Trial §7:130 citing *Goodman v. Kennedy*, supra, 18 Cal.3d at 349; *Medina v. Safe-Guard Products* (2008) 164 Cal.App.4th 105, 112 fn. 8; and *Heritage Pac. Fin'l, LLC v. Monroy* (2013) 215 Cal.App.4th 972, 994.